

Interagency Security Classification Appeals Panel

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Highlights of Activities of the Interagency Security Classification Appeals Panel May 1997 - April 1998

Executive Order 12958, "Classified National Security Information" (E.O. 12958), signed by President Clinton on April 17, 1995, and effective on October 14, 1995, created the Interagency Security Classification Appeals Panel, or "ISCAP." The President directed the ISCAP to perform three critical functions in implementing the Order's provisions. These are: (a) deciding on appeals by parties whose requests for declassification of information under the mandatory review provisions of the Order have been denied by the classifying agency; (b) approving, denying or amending agency exemptions from the automatic declassification provisions of the Order; and (c) deciding appeals brought by individuals who challenge the classification status of information that they lawfully possess. The work of the ISCAP is crucial to the implementation of E.O. 12958, because its decisions will ultimately establish the cutting edge between what information is declassified and what information remains classified.

Senior officials appointed by the Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States, and the Assistant to the President for National Security Affairs make up the six voting members of the ISCAP. The President appointed Roslyn A. Mazer, currently serving as Special Counsel for Intellectual Property Matters, Criminal Division, Department of Justice, to serve as the ISCAP's chair. Other members serving during the period covered by this release are Michael J. Kurtz, Assistant Archivist of the United States; Douglas G. Perritt, Principal Director, Information Warfare, Security and Counterintelligence, Office of the Assistant Secretary of Defense (C³I); Frank M. Machak, Information Management Reorganization Coordinator, Department of State; William H. Leary, Senior Director for Records and Access Management, National Security Council; Richard J. Wilhelm, Executive Director, Intelligence Community Affairs; and, from January-April 1998, Letitia A. Long, Acting Executive Director, Intelligence Community Affairs.

The Director of the Information Security Oversight Office (ISOO), Steven Garfinkel, serves as the ISCAP's Executive Secretary, and ISOO provides its staff support. Interested persons may communicate about the ISCAP by contacting ISOO at the address, telephone or telefax numbers above, or by e-mail to the Executive Secretary at steven.garfinkel@arch1.nara.gov.

The ISCAP's first public release, issued on June 2, 1997, described ISCAP's activities from when it first convened at the end of May 1996 through April 1997. This release focuses on ISCAP's activities from May 1997 through April 1998.

To date, the entirety of the ISCAP's decision caseload has consisted of mandatory review appeals, most involving documents from presidential libraries. Since April 1997, the ISCAP has decided additional appeals seeking the declassification of 62 documents that remained fully or partially classified upon the completion of agency processing. Of these, the ISCAP has voted to declassify 32 documents in full, to declassify significant portions of 16 others, and to affirm the agency's classification action in its entirety for 14 documents.

Viewing the totality of its decision docket from May 1996 to date, the ISCAP has declassified significant information in 84.5% of the documents on which it has voted (59 documents in full, 61.5%; 22 documents in part, 23%) The ISCAP has voted to affirm the agency's classification action fully for 15 documents (15.5%).

ISCAP actions from May 1997 through February 1998 illustrate how faithful application of the declassification standards for 25-year-old information results in unprecedented access to historically valuable records.

Under the prior Executive Order, information could be classified in perpetuity if it had originated with and been classified by a foreign government. That is not the case under E.O. 12958. Applying the new Order, ISCAP declassified in full two 1966 letters to National Security Adviser Walt Rostow from Michael Palliser, Secretary to the British Prime Minister, which assessed Asian political developments. Classification of both letters in their entirety had been retained in 1994 because they involved foreign government information.

Similarly, 25-year-old information can now remain classified for diplomatic reasons only if disclosure would "seriously and demonstrably impair relations" with a foreign government or "seriously and demonstrably undermine ongoing diplomatic activities." Finding that this standard had not been met, the ISCAP declassified in their entirety two letters from Indian Prime Minister Nehru to President Kennedy that pertain to Indian concerns during the border conflict between India and the Peoples' Republic of China. The first letter was transmitted in mid-November 1962, while fighting continued. The second was transmitted on December 9, 1962, after a cease-fire had taken effect.

The ISCAP also declassified in full two Reports for the President's File, prepared by the American Embassy's interpreter, that summarize discussions on a variety of subjects between Japanese Prime Minister Sato and President Nixon in January 1972. These records came to the ISCAP with portions classified on foreign relations grounds.

Under E.O. 12958, the exemption from declassification after 25 years for information pertaining to the identity of an intelligence source is available only if disclosure also “would clearly and demonstrably damage” national security. The ISCAP resolved appeals involving eight documents pertaining to events in the Dominican Republic around the time of its presidential election of June 1966. Of these, the ISCAP retained classification of four of them in full, and very minor portions of two others, as intelligence source-revealing. Two documents were declassified in full that pertain chiefly to U.S.-maintained biographies of prominent Dominicans.

ISCAP appeals often involve several documents on the same subject that present multiple declassification issues. Among such cases were the following:

- The ISCAP declassified in full (with the exception of identified Restricted Data or Formerly Restricted Data, as noted below) eight documents from the Eisenhower Library, one document from the Kennedy Library, and three documents from the Johnson Library on a variety of issues pertaining to the deployment and potential use of nuclear weapons in Europe. Two other documents pertaining to this subject, one from the Eisenhower Library and one from the Kennedy Library, were declassified except for one small portion in each. Among the specific subjects addressed in these documents, which date from 1953, 1957-60, 1962, and 1963-64, are command and control, targeting, authorization for expenditure in emergency situations, and consultations with allied governments. Both military and foreign relations grounds were advanced for continued classification.
- The ISCAP acted upon six State Department messages sent during June and July, 1967, in the aftermath of the Middle East “Six Day War.” The ISCAP voted to declassify two messages in their entirety, which discussed the situation in the West Bank and Israeli capabilities and intentions concerning the acquisition of nuclear weapons. The ISCAP retained classification in full of two more messages and declassified in part the remaining two messages. Classification was retained where disclosure would have seriously and demonstrably undermined ongoing diplomatic activities in the Middle East or, in one instance, would have revealed an intelligence source requiring continued protection.
- The ISCAP likewise retained the classification in full of three telegrams relating to the health of a foreign official that were determined to be intelligence source-revealing, the disclosure of which would have clearly and demonstrably damaged the national security interests of the United States.
- The ISCAP acted upon copies of 17 State Department documents located in the Ford Library, dating from 1974-76. The documents pertain either to diplomatic initiatives about nuclear material processing or reprocessing by the Republic of Korea, or to diplomatic initiatives about the potential development of nuclear weapons and missiles by the Republic of Korea. Although the documents were less than 25 years old, the ISCAP

members agreed to consider them in accordance with the standards of section 3.4 of E.O. 12958, which pertains to information over 25 years old. The reason for the ISCAP applying the more stringent standards for continued classification was the fact the information would be more than 25 years old, or almost 25 years old in the year 2000, when the automatic declassification provisions of the Order fully vest. Of the 17 documents, the ISCAP declassified four in their entirety, declassified significant portions of ten other documents, and retained the agency's classification of four documents. It should be noted, however, that in two of these four documents, only one very brief reference in each document remained classified. The basis for continued classification primarily related to the serious and demonstrable impairment to U.S. relations with a foreign government or governments or to ongoing U.S. diplomatic activities. Secondly, several portions remained classified because they revealed the identity of a confidential source or an intelligence source.

- The ISCAP declassified in full a memorandum to President Johnson from his National Security Adviser, Walt Rostow, dated September 6, 1968, that speculates about military options then available to the North Vietnamese army. Portions of the memorandum had been classified to protect foreign relations and intelligence sources or methods.

- The ISCAP declassified in its entirety an eight-page document that lists the identifying number and title of selected National Intelligence Estimates issued between 1961 and 1964. In a separate appeal, the ISCAP also declassified a similar document issued by the Central Intelligence Agency Office of National Estimates proposing National Intelligence Estimates for the second half of calendar year 1965. Except for one small portion of the second document that remains classified, the ISCAP's vote rejected the contention that continued classification was necessary for portions of these particular documents on both foreign relations and intelligence sources and methods grounds.

During the period covered by this release, the Department of Energy (DOE) determined that six documents contained in appeals before the ISCAP referenced information classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act. Information classified under the Atomic Energy Act is outside the jurisdiction of the ISCAP. DOE determined that one document before the ISCAP contained Formerly Restricted Data exclusively; and that all of the remaining classified portions of another document before the ISCAP were Formerly Restricted Data. Therefore, the ISCAP took no action on these documents. Of the four documents that contained both classified national security information, subject to the ISCAP's jurisdiction, and Restricted Data or Formerly Restricted Data, outside its jurisdiction, the ISCAP declassified the entirety of those portions within its jurisdiction. With the approval of the ISCAP members, the ISCAP chair recommended that DOE initiate a review of those documents found to contain either Restricted Data or Formerly Restricted Data for purposes of determining any basis for their continued classification in those categories.

During its deliberations, the ISCAP has sometimes consulted, through the State Department, with officials of foreign governments to obtain their views concerning the prospective declassification of particular documents involving their equities. The Department of State has reported receiving significant cooperation from these governments in the course of these consultations.

The following benchmarks of the ISCAP's work are notable:

Declassification of significant information in 84.5% of the documents in the appeals it has acted upon to date, including declassification in full of 61.5%.

Declassification of substantial amounts of foreign government information, which almost certainly would have remained classified under previous orders.

Continued classification of information that would be intelligence source revealing, or could jeopardize ongoing diplomatic activities.

A demonstrated willingness to examine afresh the justification for continued classification of each category of information -- even for information that previously, for all intents and purposes, was classified in perpetuity.

Pragmatism has replaced reflexive use of classification categories. Balanced skepticism has replaced deference.

The database of decisions rendered by the ISCAP is available from ISOO on Microsoft Access 2.0 or in hard copy. Documents declassified by the ISCAP are usually made available to the requester through the custodial unit (e.g., a presidential library) that has permanent custody of them. Other interested persons may ordinarily obtain copies of declassified documents from the custodial units. ISOO may be contacted at the above address and telephone number for assistance in identifying and requesting copies of the documents discussed in this release.